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Book Review: Majority Rule and Minority Rights

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cause of action, but also should determine the time within which suit may be brought in another jurisdiction.⁸

Is the limitation in a wrongful death action a matter of substantive right or merely a procedural matter?

The effect of the statute of limitations in a wrongful death act is to prevent recovery upon the cause of action after a lapse of a period of time after the wrongful death. This limitation does not affect the presentation of the facts, but seems to limit the substantive right of the plaintiff. The right is not gone until lost under the statute that created it. It would seem that the limitation terminates the substantive right and so the *lex loci* should govern. The limitation seems to be part of the substantive right and the courts should recognize it as such and not as a mere matter of procedure.

EUGENE F. KOBAY

Majority Rule and Minority Rights, by Henry Steele Commager.

Peter Smith, New York, 1950 Pp. 92. \$2.50.

Mr. Commager reconsiders the old problem of democracy, the preservation of majority rule and minority rights versus limited government. An analysis of the Hamiltonian solution (judicial review) discloses that after 150 years the United States Supreme Court has failed to further and secure the human rights it purports to protect and:

"the congress and not the courts, emerges as the instrument for the realization of the guarantees of the Bill of Rights."

Commager tenders the nation old "Jeffersonian solution" to this problem and holds that the people themselves are best qualified to decide the ultimate merits of the constitutional rights involved. This answer is both workable and necessary for it offers a stimulant to the citizens of a democratic state which in turn it their preservation of their form of government and their rights. The people never seriously threatened any basic right because of reason, education, and natural sanctions e.g. rebellions. The contention is made that the citizenry is falsely lulled into apathy believing the courts are preserving their fundamental rights. This result tends to weaken a democracy.

This book represents the liberal position to the solution of majority rule versus limited government and is recommended for its scholarly and stimulating discussion of the problem.

EARL A. CHARLTON

⁸ Cases collected and discussed in 68 A.L.R. 217 (1930) ; 146 A.L.R. 1356 (1943).